

**CITY COUNCIL
ATLANTA, GEORGIA**

A RESOLUTION BY COUNCIL MEMBER JOYCE SHEPERD

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH BROCK BUILT, LLC PROVIDING FOR THE NON-STANDARD LOCATION OF WATER METERS ON PRIVATE PROPERTY TO WHICH THE CITY PROVIDES WATER SERVICES; AND FOR OTHER PURPOSES.

WHEREAS, Brock Built, LLC ("Brock Built") wishes to build up to 150 residential, single-family units in a planned development housing (PDH) subdivision located within the municipal boundaries of the City of Atlanta ("City"); and

WHEREAS, the proposed residential units would be served with potable water from the City; and

WHEREAS, The City typically requires that water meters be installed at the "service connection" location either on City property, in the right-of-way or within an easement or license granted to the City; and

WHEREAS, Section 154-66 of the City's Code of Ordinances regarding the City's water system provides that a "service connection" is the point of water delivery to a premises where the water meter is normally located and where the City's responsibility ends and the water customer's responsibility begins; and

WHEREAS, Brock Built proposes to locate up to one hundred fifty (150) water meters at locations different than the service connection location, to allow each meter to be located on private property on an individual lot in the PDH subdivision; and

WHEREAS, the Commissioner of the City's Department of Watershed Management has reviewed the plans submitted by Brock Built for the installation of water system infrastructure, including the initial 112 meters, within the PDH subdivision and has approved those plans and considered Brock Built's request for installation of water meters on private property; and

WHEREAS, it is desirable and in the best interests of the City to enter into an Agreement with Brock Built setting forth the terms between the parties concerning the installation of and responsibility for water system infrastructure, including meters, within the Subdivision.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA THAT, the Mayor is authorized to execute with Brock Built an Agreement for the non-standard location of water meters on private property located within the PDH subdivision upon substantially the following conditions:

- 1) The PDH subdivision water system will be constructed per the Plans attached as Exhibit 1 and as otherwise modified pursuant to the agreement referenced herein, with the water meters located on private property.
- 2) The "service connections" will be located at the south side of Browns Mill Road, at the north side of Susy Griffin Road, and at the southwest side of Humphries Drive ("Valves"), as shown on Exhibit 1, so that the City's responsibility for the public portions of the water system includes the Valves.
- 3) The City or its representatives will read each water meter at the locations indicated in the Plans.
- 4) Brock Built agrees, prior to the sale of any lots and water service being established, to place within the recorded Declaration of Covenants and Restrictions that are applicable to the subdivision a covenant that each property owner and the Homeowners Association: (i) acknowledges the City's or its representatives' license to enter the subdivision, including all privately owned individual lots, to read water meters, (ii) acknowledges the applicability of the City's Code of Ordinances to each residence with respect to water services provided to it and water infrastructure located within the Subdivision; (iii) acknowledges that water services provided to the Subdivision are governed, in addition to the City's Code of Ordinances and applicable law, by this Agreement, and a copy of this Agreement shall be attached to and recorded with the covenants; (iv) acknowledges that the water lines between the meter and the residence and between the meter and the Valves must be maintained by the resident or the Homeowners Association; and (v) acknowledges that the Homeowners Association shall indemnify the City from all damage claims resulting from the installation, maintenance and access to the meters that are located within the subdivision.
- 5) Brock Built further agrees to record an appropriate easement in favor of the City applicable to the subdivision, including all privately owned individual lots, granting the City ingress and egress for pedestrian and vehicular traffic for the purpose of reading individual water meters within the subdivision.

BE IT FURTHER RESOLVED, that the City Attorney is authorized to prepare an Agreement with Brock Built for this transaction, as deemed necessary and appropriate or as required by law, in accordance with this Resolution and in substantially the same form as Exhibit 2.

BE IT FURTHER RESOLVED, that the Agreement will not become binding upon the City and the City will not be liable or obligated under it until it has been duly executed by Brock Built, executed by the Mayor, attested to by the Municipal Clerk, approved by the City Attorney as to form and delivered to Brock Built.

AGREEMENT

This AGREEMENT ("Agreement") is entered into this ____ day of _____, 2006, between **BROCK BUILT, LLC** ("Brock Built"), a Georgia limited liability company, and the **CITY OF ATLANTA** ("City"), a Georgia municipal corporation.

BACKGROUND:

Section 154-66 of the City's Code of Ordinances regarding the City's water system provides that a "service connection" is the point of water delivery to a premises where the water meter is normally located and where the City's responsibility ends and the water customer's responsibility begins; and

The City typically requires that water meters be located at the "service connection" location to be on City property, in the right-of-way or within an easement or license granted to the City; and

Brock Built is developing The Village at Browns Mill, a PDH Community, Land Lots 35, 36, 61, 62, 14th District, a residential planned development housing subdivision ("Subdivision"), currently consisting of one hundred twelve (112) residential units, with modifications planned for twenty-six (26) additional units, located in the City of Atlanta, Fulton County, Georgia, and in which area water service is provided by the City; and

Brock Built proposes to locate up to one hundred thirty eight (138) but not to exceed 150 water meters at locations different than the service connection location, to allow each meter to be located on an individual lot; and

The City has consented to that proposal and, by legislation adopted on _____, 2004, by the City's Council and approved as per City Charter Section 2-403 on _____, 2004, attached as Exhibit 1, authorized the City to execute with Brock Built an agreement pertaining to the proposed non-standard locations of the water meters;

Accordingly, the City and Brock Built agree as follows:

1. **Construction of Water System; Location of Meters.** Except as it may be modified pursuant to Section 3.1 of this Agreement, the water system for the Subdivision will be constructed in accordance with the Plans attached as Exhibit 2, entitled The Village at Browns Mill, prepared by Mactec Engineering and Consulting, Inc. revised November 30, 2005. The water system for the Subdivision will contain individual water meters at locations substantially similar to the locations shown on Exhibit 2. The City agrees that each individual water meter will be read by the City or its representatives at the locations set forth on Exhibit 2 for the purposes of rendering bills to each individual property owner for its respective and independent water use. Brock Built agrees that the City or its representatives shall have the authority to enter the Subdivision to read any meter, and this Agreement constitutes a right of entry, license and agreement by Brock Built that the

City or its representatives are authorized to enter such Subdivision and that entry will not constitute a trespass. Brock Built agrees, prior to the sale of any lots and water service to any residence being established, to place within the recorded Declaration of Covenants and Restrictions applicable to the Subdivision a covenant that each property owner and the Homeowners Association: (i) acknowledges the City's or its representatives' license to enter the Subdivision, including all privately owned individual lots, to read water meters, (ii) acknowledges the applicability of the City's Code of Ordinances to each residence with respect to water services provided to it and water infrastructure located within the Subdivision; (iii) acknowledges that water services provided to the Subdivision are governed, in addition to the City's Code of Ordinances and applicable law, by this Agreement, and a copy of this Agreement shall be attached to and recorded with the covenants; (iv) acknowledges that the water lines between the meter and the residence and between the meter and the valves must be maintained and repaired by the resident or the Homeowners Association in accordance with all applicable laws and specifications for water system infrastructure; and (v) acknowledges that the Homeowners Association shall indemnify the City from all damage claims resulting from the installation, maintenance and access to the meters that are located within the Subdivision. Brock Built further agrees to record an appropriate easement in favor of the City applicable to the Subdivision, including all privately owned individual lots, granting the City ingress and egress for pedestrian and vehicular traffic for the purpose of reading individual water meters within the Subdivision.

2. **Service Connection; Infrastructure Responsibilities.** The "service connection" location for the Subdivision will not be located where any individual water meter is located. Instead, the "service connection's" location will be at the point of the water system on the south side of Browns Mill Road, on the north side of Susy Griffin Road, and on the southwest side of Humphries Drive with valves ("Valves") as shown on Exhibit 2, so that the City's responsibility for the public portions of the water system includes the Valves. Brock Built agrees that it is entirely responsible, at its expense, for the construction, operation, maintenance and repair of all water services infrastructure located immediately after the "service connection" and vault and throughout the Subdivision. The City agrees that Brock Built shall not be responsible for payments or fees to the City for construction, operation, maintenance and repair of the water system located after the service connection, as herein defined, including but not limited to installation of individual meters and lines thereto. The City's approval of Exhibit 2 does not encompass an approval that the materials proposed to be installed in the Subdivision in the form of water services infrastructure, except for materials identified on the Exhibit 2 as being installed per City or County requirements or regulations, are fit or appropriate for their intended use (e.g. non-standard pvc pipe, etc.).

3. **Miscellaneous:**

- 3.1. **Future Modifications to Exhibit 2 Authorized.** Should the Subdivision be modified in the future so as to alter or increase the land area and number of individual residential water meters within the The Village at Browns Mill development beyond that set forth in Exhibit 2, the provisions of this Agreement

shall also apply to said modified area and associated individual water meters, provided the water system plan for said modified area has been approved by the City's Department of Watershed Management and further provided the total number of individual water meters at The Village at Browns Mill shall not exceed one hundred fifty (150). In the event of such modification, Brock Built agrees to comply with all requirements of this Agreement relating to such modified land area or number of individual residential water meters, including, but not limited to, recording an amended Declaration of Covenants and Restrictions and easement, as contemplated under the Clause titled "**Construction of Water System; Location of Meters**".

3.2. **Binding Effect.** This Agreement will inure to the benefit of and be binding upon Brock Built and the City, their legal representatives and permitted successors and assigns.

3.3. **Severability.** In the event any provision in this Agreement is held by any Court of competent jurisdiction to be invalid or unenforceable, that will not effect the remainder of this Agreement, and the remaining provisions of this Agreement will continue in force and effect to the extent as would have been the case had the invalid or unenforceable provisions of this Agreement had never been a part of this Agreement.

3.4. **Applicable Law.** This Agreement will be governed by and construed and enforced in accordance with the laws of the State of Georgia.

3.5. **Forum Selection Clause.** The City and Brock Built agree that any judicial review of any claim arising under or concerning this Agreement must be brought in Fulton County, Georgia. Accordingly, the parties fix venue and jurisdiction for any claim concerning this Agreement in Fulton County, Georgia.

3.6. **Ethics: Gratuities And Kickbacks.**

3.6.1. **Gratuities and Kickbacks.** The right of Brock Built to proceed under this Agreement may be terminated if, after notice and hearing, City determines that Brock Built:

3.6.1.1. offered or gave a gratuity or kick-back (e.g. an entertainment, fee, commission, compensation of any kind or gift) to an officer, official, or employee of City; and

3.6.1.2. intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

3.6.2. **Rights and Remedies.** The rights and remedies of City provided in this Clause are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

3.7. **Contingent Fees.** Brock Built warrants that it has not employed or retained any company or person, other than a bona fide employee, contractor, or legal counsel working for it, to solicit or secure this Agreement; and that Brock Built has not paid or agreed to pay any person, company, association, corporation, individual or firm, other than a bona fide employee working for it, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this warranty, and upon a finding after notice and hearing, City will have the right to terminate this Agreement, and collect from Brock Built the full amount of such fee, commission, percentage, gift or consideration.

3.8. **Further Acts.** Brock Built agrees to perform any additional acts and execute and deliver any additional documents as may reasonably be necessary in order to carry out the provisions and effectuate the intent of this Agreement.

CITY:

BROCK BUILT, LLC

MAYOR

Name: _____

Title: _____

ATTEST:

ATTEST:

MUNICIPAL CLERK (Seal)

SECRETARY/ASSISTANT
SECRETARY (Seal)

APPROVED:

APPROVED AS TO FORM:

COMMISSIONER, DEPARTMENT OF
WATERSHED MANAGEMENT

CITY ATTORNEY

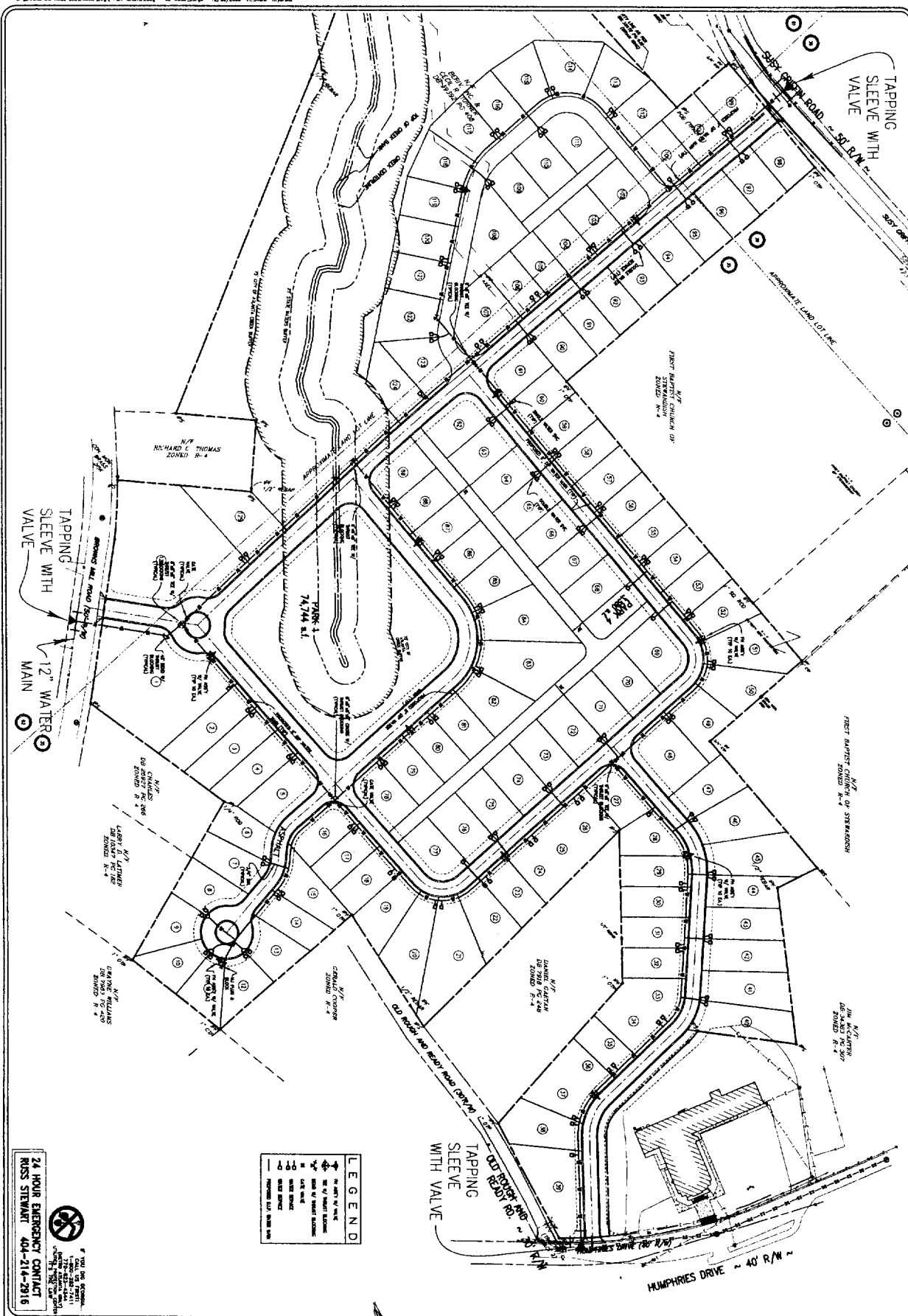


EXHIBIT 1

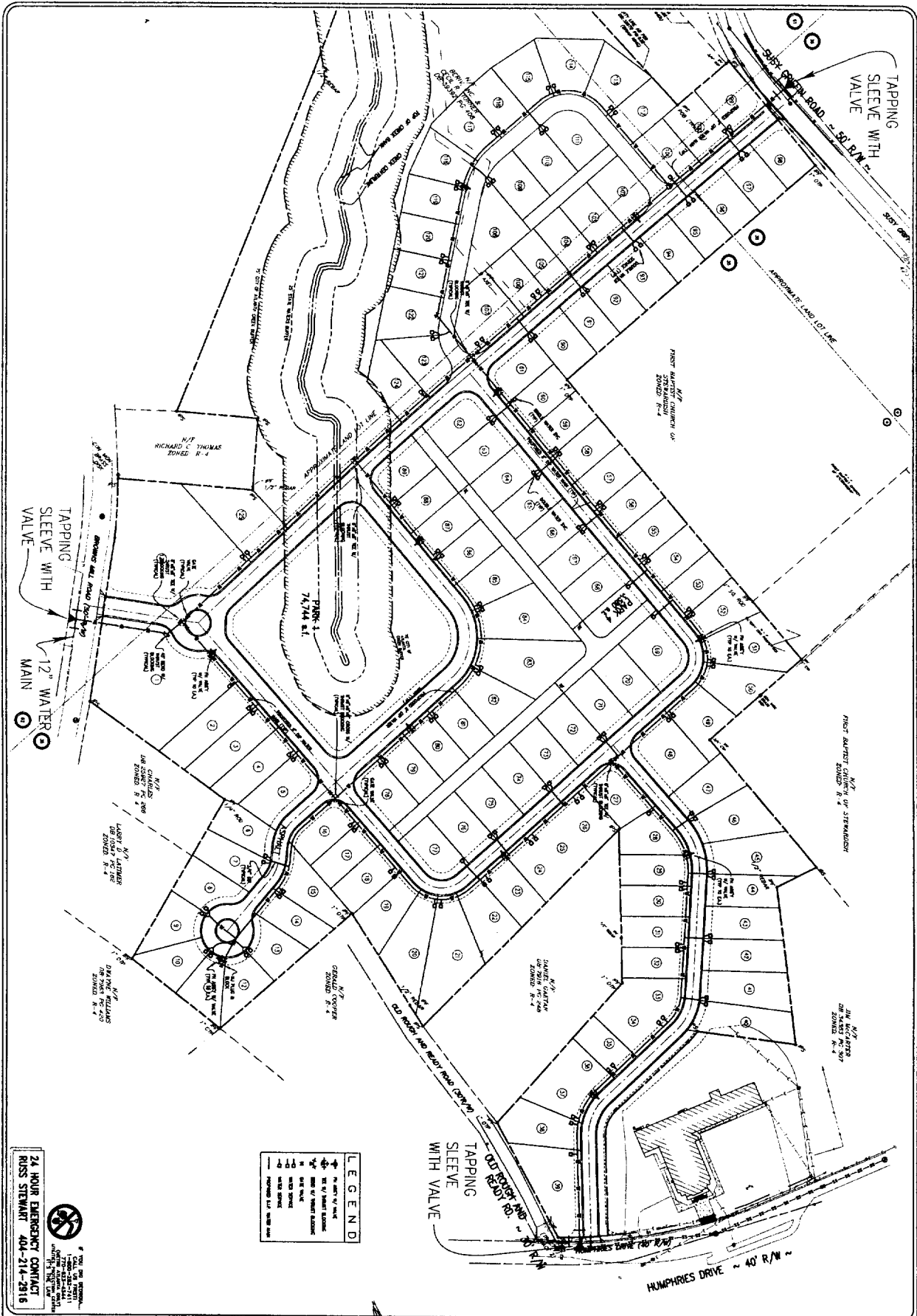


EXHIBIT 2

24 HOUR EMERGENCY CONTACT RUSS STEWART 404-214-2815	Job No. 6311-05-0005	Construction Plans For The Village at Browns Mill Land Lots 34, 35, 36, 37 & 38 - 14th District - Fulton County, City of Atlanta, Georgia		WATER DISTRIBUTION PLAN		Prepared For Brock Built LLC 2001 Marietta Road Atlanta, GA 30339 Phone 404-361-7555	Prepared By MACTEC MACTEC Engineering and Consulting, Inc. 3200 Peachtree Road, Suite 100 Norcross, Georgia 30071 (770) 421-3400
				DATE: 12/26/08 SCALE: 1"=40' DRAWN BY: JLS CHECKED BY: JLS	REVISIONS: NO. 1: 12/26/08 DESCRIPTION:		